

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

JUN 15 2000

In the Matter of)	
)	
Oregon Public Utility Commission's)	CC Docket No. 96-98
Petition for Delegation of Additional)	NSD File No. L-00-29
Authority to Implement Number)	DA 00-1094
Conservation Measures)	

COMMENTS OF AT&T CORP.

Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, AT&T Corp. ("AT&T") hereby submits its comments on the Oregon Public Utility Commission's ("OPUC") January 25, 2000 petition for additional authority to implement number conservation measures ("Petition").

Shortly after the instant Petition was filed, the Commission issued its Report and Order and Further Notice of Proposed Rulemaking ("NRO Order") in CC Docket No. 99-200.¹ As shown below, the NRO Order renders virtually all of the Petition's requests for delegated authority moot by establishing federal requirements that govern those matters. On April 28, 2000, the OPUC made a "Supplemental Filing" ("Supplement") in support of its request for authority to conduct mandatory interim thousands block number pooling. The Supplement concedes, however, that it does not satisfy the standards established in the NRO Order, and that

¹ Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200 (released March 31, 2000) ("NRO Order").

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document fails to demonstrate the “special circumstances” that might warrant a waiver of the order’s requirements.²

Reporting Requirements. The Petition seeks the power to (p. 8) “establish requirements for interim mandatory data reporting and forecasting of number utilization.” However, the NRO Order establishes a federal reporting regime (§§ 37-84), and expressly refuses to permit state commissions to impose their own reporting requirements. “We will not delegate authority to the states to impose additional regularly scheduled reporting requirements on any carriers. Such independent authority would undermine the purpose of establishing regularly scheduled federal reporting requirements, namely a uniform standard that all carriers could use in their record keeping and reporting activities.”³ The OPUC’s request is plainly moot in light of this ruling.

Code Reclamation. The OPUC’s request (p. 4) for power to reclaim codes is moot in light of the NRO Order’s grant of power to state commissions to (§ 237) “investigate and determine whether code holders have ‘activated’ NXXs assigned to them within the time frames specified in this proceeding.” If the Commission nevertheless decides to grant the OPUC

² To the extent that the Commission determines that the issues raised in the instant Petition are not rendered moot by the NRO Order, AT&T hereby incorporates into these comments by reference (i) its prior pleadings concerning each of the previously filed state petitions for delegated authority to adopt number conservation measures, (ii) its pleadings addressing the Commission’s Numbering Resource Optimization NPRM, Numbering Resource Optimization, Notice of Proposed Rulemaking, CC Docket No. 99-200 (released June 2, 1999), and (iii) its pleadings concerning the Further NPRM in that docket.

³ NRO Order § 76; see also id. (“[I]n granting states access to the federally ordered reports, we are eliminating the need for states to require carriers to report utilization and forecast data on a regular basis. Thus, we supersede the authority specifically delegated to some states to require such reporting.”).

additional reclamation powers, it should in no event accede to the Petition's request (p. 4) for authority to reclaim "under-utilized blocks of numbers." The Petition gives no indication of what it might constitute "under-utilization," and granting such authority would place the OPUC in the untenable position of deciding whether a carrier had achieved sufficient success to be permitted to continue to serve customers. Nothing in the Commission's prior orders or in the 1996 Act permits regulators to limit competition in such a manner.⁴

Audits. The Petition also seeks the power (p. 3) to establish auditing procedures and conduct audits. While the NRO Order does not adopt federal requirements for numbering-related audits, it does note that the Commission (¶ 9) "intend[s] to address" that issue "in subsequent orders in this docket." Given the Commission's clearly stated intent, and the expeditious manner in which it has resolved matters in CC Docket No. 99-200 to date, there is every reason to believe that federal audit standards will be issued forthwith. Accordingly, the Commission should not burden carriers with inconsistent state-created audit schemes during the short interim period until it issues federal requirements.

Fill Rate Requirements for Growth Codes. The OPUC's request (p. 4) for the power "to establish minimum fill rates for growth codes" should be denied in light of the NRO Order's steps to "adopt national verification standards to improve the efficiency with which numbering resources are being allocated and used." NRO Order ¶ 91. That order establishes a national

⁴ The Commission should also reject the Petition's suggestion that (p. 4) the OPUC should be able to reclaim codes that are "not put into service within the time provided by guidelines and other protocols or policies established by Oregon...." The OPUC does not have -- and its Petition does not seek -- authority to establish requirements for activating codes. In all events, the NRO Order (¶¶ 237-41) sets national standards for the activation of NXXs and the reclamation of codes that fail to meet those requirements.

formula for calculating utilization, and requires all carriers not participating in pooling to achieve a “national utilization threshold” (§ 115) beginning January 1, 2001. No valid purpose would be served by requiring carriers to modify their systems and operations to conform to an Oregon-specific utilization rate for a period of -- at most -- a few months, only to incur this expense and disruption again when federal requirements take effect on January 1st.

Similarly, the NRO Order moots the Petition’s request (p. 4) for “authority to require carriers to demonstrate that necessary facilities will be in place to serve a specific rate center within six months of code assignment.” The order (§ 97) requires carriers seeking initial numbering resources in a rate center to “provide the NANPA appropriate evidence ... that its facilities are in place or will be in place to provide service within 60 days of the numbering resources activation date.”

Sequential Number Assignment. The Petition also seeks (p. 3) authority to require sequential number assignment, an issue that is directly addressed by the NRO Order. In the order (§ 244), the Commission adopts a “flexible requirement that mandates that carriers first assign all available telephone numbers within an opened thousands-block before opening another thousands-block, unless the available numbers in the opened thousands-block are not sufficient to meet a customer request.” The order goes on to expressly require (§ 246) “that existing delegations of sequential numbering authority conform to the provisions herein,” because of the “potential inconvenience and confusion from the existence of disparate requirements....” In light of these unequivocal rulings, the OPUC may not obtain authority to impose its own sequential number assignment standards, but must adhere to the NRO Order’s requirements.

Unassigned Number Porting. The OPUC’s request (p. 4) for authority to require unassigned number porting (“UNP”) is directly foreclosed by both the NRO Order and the

Commission's prior orders. The Commission concluded in its earlier numbering waiver orders that UNP is "currently at too early a stage of development to order implementation," although carriers may engage in UNP on a voluntary basis.⁵ The NRO Order unequivocally affirms this conclusion, holding (§ 230) that UNP is, inter alia, "not yet sufficiently developed for adoption as nationwide numbering resource optimization measure[]" and could "complicate the effort to move to thousands-block pooling." Accordingly, the order (id.) states that the Commission "decline[s] to delegate to state commissions authority to order UNP" The Petition does not even attempt to offer evidence that suggests the Commission should revisit these holdings.

Revising Rationing Procedures. The OPUC further requests the power (p. 5) to "revise rationing procedures during a jeopardy period without industry consensus." The Commission has expressly refused to grant such authority in its prior numbering waiver orders, and nothing in the Petition provides any grounds to revise that conclusion.⁶

Thousands Block Number Pooling. The Petition (p. 3) requests power to require mandatory interim thousands block number pooling ("TNP"). After the Petition was filed, the

⁵ Order, New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 96-98, NSD File No. L-99-21, § 37, released September 15, 1999 ("New York Waiver Order"); Order, Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781 and 978 Area Codes, CC Docket No. 96-98, NSD File No. L-99-19, § 43, released September 15, 1999.

⁶ Order, New Hampshire Public Utilities Commission's Petition for Additional Delegated Authority to Implement Number Optimization Measures in the 603 Area Code, CC Docket No. 96-98, NSD File No. L-99-71, § 35, released November 30, 1999 (refusing to grant "New Hampshire Commission's request for authority to revise rationing plans put into place pursuant to industry consensus").

NRO Order (§ 170) required state commissions seeking authority to require interim TNP to make a further showing “1) that an NPA in its state is in jeopardy, 2) the NPA in question has a remaining life span of at least a year, and 3) that NPA is in one of the largest 100 MSAs, or alternatively, the majority of wireline carriers in the NPA are LNP-capable.” Alternatively, the order permitted (id.) states to attempt to demonstrate that “special circumstances” warranted a grant of pooling authority in a particular NPA. The OPUC seeks TNP authority in two NPAs, 541 and 503, but concedes that neither satisfies the NRO Order’s criteria.⁷ As shown below, the Supplement falls far short of the showing necessary to demonstrate “special circumstances.”

More than half of the nation’s state commissions have now sought delegated authority over number administration.⁸ To AT&T’s knowledge, all of those commissions that failed satisfy the NRO Order’s interim pooling criteria have argued that “special circumstances” pertain in their states’ NPAs. Plainly, a waiver standard that every requesting state could satisfy would be no standard at all. The NRO Order sought to condition grants of interim TNP authority to ensure that pooling would be rolled out in a limited, controlled manner -- and the Commission found that to do otherwise could jeopardize the integrity of the public telephone network.⁹ In deciding whether a particular NPA presents “special circumstances,” both the NRO Order and

⁷ See Supplement, pp. 3, 4.

⁸ As of the date of the instant pleading, at least twenty-six state commissions have filed petitions for delegated authority over numbering. In addition to the OPUC petition, petitions have been filed by state commissions from Arizona, California, Colorado, Connecticut, Florida, Georgia, Indiana, Iowa, Kentucky, Maine, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington and Wisconsin.

⁹ See NRO Order § 159.

fundamental principles of administrative law require the Commission to articulate definite standards, and to set meaningful limits.

The agency may not act out of unbridled discretion or whim in granting waivers any more than in any other aspect of its regulatory function. The process viewed as a whole leads to a general rule, and limited waivers or exceptions granted pursuant to an appropriate general standard. This combination of a general rule and limitations is the very stuff of the rule of law, and with diligent effort and attention to essentials administrative agencies may maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility.¹⁰

The OPUC argues that the Commission should waive the NRO Order's requirements for the 541 NPA because of that area code's "rural nature," and because it covers a large area and therefore contains "numerous small rate centers." Supplement, p. 3. Neither of these factors provides valid ground for a waiver. The number of rate centers in the 514 NPA is within the OPUC's control, and could be reduced via rate center consolidation.¹¹ The 514 NPA's rural character is similarly irrelevant. One of the interim TNP criteria promulgated in the NRO Order is that an NPA be in one of the top 100 MSAs. That requirement necessarily means that the Commission has concluded that TNP should be implemented first in non-rural -- that is, heavily populated -- areas. To permit an area's rural nature to constitute a "special circumstance" would negate one of the NRO Order's primary criteria, and would permit virtually any NPA to be deemed suitable for TNP.

The Supplement next argues (p. 4) that mandatory interim pooling should be permitted in

¹⁰ WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

¹¹ See Notice of Proposed Rulemaking, Numbering Resource Optimization, CC Docket No. 99-200, FCC 99-122, released June 2, 1999, ¶ 117 ("states do not require any additional delegation of authority from the Commission to engage in rate center consolidation").

the 503 NPA despite the fact that it is not expected to exhaust until 2007 (following implementation of a planned overlay) and is not currently in jeopardy. The OPUC argues that, although 503 is not in jeopardy, number pooling would have number optimization benefits. This fact cannot reasonably be deemed to establish a “special circumstance,” however, as it arguably would apply to every NPA, and thus provides no basis to distinguish among candidates for TNP implementation. The NRO Order’s criteria explicitly seek (§ 170) “to ensure that pooling is implemented in areas where it has the potential to be most beneficial.” Recognizing that TNP must be rolled out gradually, the Commission sought initially to target NPAs that otherwise would be subject to relief in the near term. Given that the 503 NPA is not in jeopardy -- unlike many other NPAs that otherwise meet the NRO Order’s criteria -- there is no reasoned basis upon which the Commission could grant the relief the OPUC seeks.

Whatever its ruling on the OPUC’s request for interim TNP authority, AT&T urges the Commission to be mindful of the NRO Order’s conclusions when considering pending numbering waiver requests and administering prior waivers. That order held that

a staggered [pooling] rollout schedule is necessary, primarily because an overload of the telecommunications network may cause network disruptions when carriers’ Service Control Points (SCPs) capacity has been depleted. Based on input we received from NeuStar, the current pooling administrator of ongoing state trials, we also tentatively conclude that the rollout should encompass a maximum of three NPAs in each NPAC region per quarter.¹²

The ten numbering waivers the Commission has granted to date do not impose any direct limits on those state commissions’ ability to roll out pooling in a manner that directly conflicts with the NRO Order’s finding that implementing that capability in more than three NPAs per NPAC

¹² Id. § 159 (emphasis added).

region per quarter could jeopardize network reliability. Although the prior waivers permit states to roll out pooling only “in a single MSA in their state” and to “expand pooling to another MSA only after having implemented pooling in the initial MSA and after allowing carriers sufficient time to undertake necessary steps to accommodate thousands-block number pooling,”¹³ nothing in those orders explicitly requires states in the same NPAC region to coordinate implementation so as to avoid creating the very risk the NRO Order deems unacceptable.¹⁴ For example, the New York commission recently issued an order that would require, *inter alia*, pooling in four NPAs in that state alone in April 2001, exceeding the NRO Order’s threshold.¹⁵ Meanwhile, both Massachusetts and Maine are in the same NPAC region as New York, and each of those states has been granted interim pooling authority as well, exacerbating the risks to network reliability due to a potential “race” among neighboring states to implement pooling as rapidly as possible so as to avoid being “left out” if SCP capacity problems emerge in their NPAC region. In light of the NRO Order’s findings, the Commission should exercise its authority pursuant to

¹³ NRO Order ¶ 170.

¹⁴ The prior state numbering waivers recognize the risk of implementing pooling in an uncontrolled manner. The Commission expressed “concern[] about the potential strain which multiple thousands-block pooling trials in an Metropolitan Statistical Area (MSA), state, or region may have on the functioning of the public switched telephone network,” and acknowledged that SCP capacity could be a limiting factor. E.g., New York Waiver Order ¶¶ 12, 13.


¹⁵ See Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law, to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to Evaluate the Options for making Additional Central Office Codes and/or Area Codes Available in Areas of New York State When and Where Needed, Order Instituting State-Wide Number Pooling and Number Assignment and Reclamation Procedures, Case 98-C-0689 (New York Public Service Commission, March 17, 2000), Appendix A.

47 U.S.C. § 251(e) to require state commissions to coordinate their rollout of interim pooling programs, both in states that already have obtained waivers and in those that may do so in the future.

CONCLUSION

AT&T urges the Commission to act on the instant Petition in a manner consistent with these comments.

Respectfully submitted,

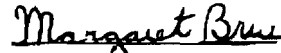
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CERTIFICATE OF SERVICE

I, Margaret Brue, do hereby certify that on this 15th day of June, 2000, a copy of the foregoing "Comments of AT&T Corp." was mailed by U.S. first-class mail, postage prepaid to the party listed below:

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